

JAN 21 1972

E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

TERM, 1971

No. 71-5172

CHARLES O. DUKES,

Petitioner,

v.

WARDEN, CONNECTICUT STATE PRISON,

Respondent.

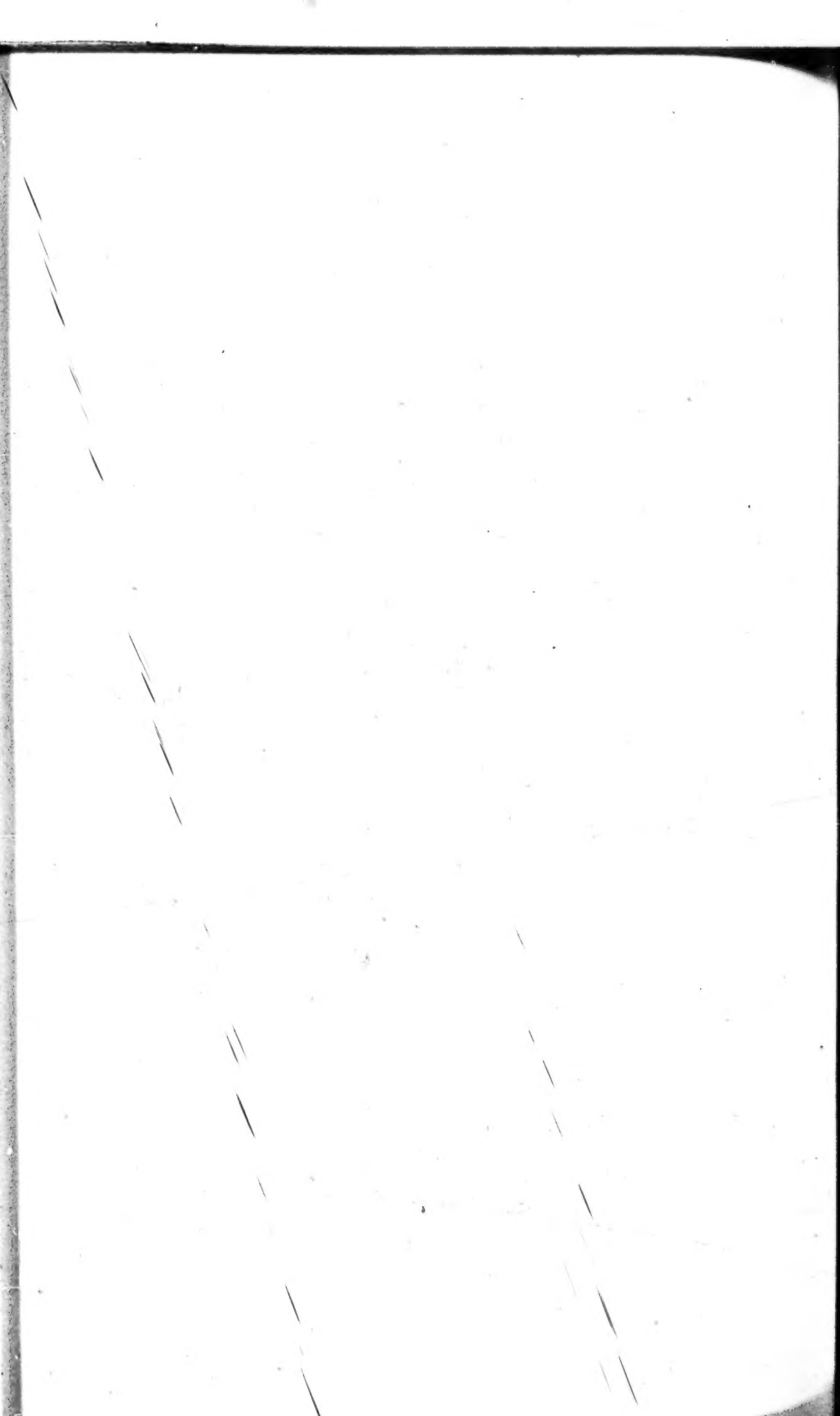
BRIEF FOR THE RESPONDENT

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OPINION BELOW

The opinion of the Supreme Court of the State of Connecticut is reported, *sub nomine*, *Charles O. Dukes v. Warden, Connecticut State Prison*, Conn. , A.2d , (33 Connecticut Law Journal No. 2, p. 14, July 13, 1971). (App. p. 48, et seq.)

JURISDICTION

The judgment of the Connecticut Supreme Court was entered on June 25, 1971, which judgment was announced on July 13, 1971, wherein it affirmed the decision of the Superior Court for Hartford County denying Charles O. Dukes' petition for habeas corpus. The petition for a writ of certiorari was filed on July 27, 1971, and was granted on November 9, 1971. The jurisdiction of this court is invoked under the authority of 28 U.S.C.A. § 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner maintains that the judgment of the Connecticut Supreme Court affirming the denial of his petition for a writ of habeas corpus violates his rights under the Sixth and Fourteenth Amendments to the United States Constitution.

QUESTIONS PRESENTED

Was there a conflict of interest prejudicial to the petitioner when he retained counsel to represent him in a narcotics-larceny-receiving case who he knew already represented two girls in a separate and unrelated case, and when he knew the girls had cooperated with the police against him in the unrelated case?

When petitioner alleges in a habeas corpus proceeding two years after his guilty plea that his counsel had a conflict of interest, must the petitioner prove that there was an actual conflict; that the petitioner was prejudiced thereby and that the conflict rendered the plea involuntary?

(Joint Appendix references are prefaced by "App. p. ."
Respondent's Appendix references are prefaced by "Resp.
App. p. A ."

All statutory references are to Connecticut General Statutes.)

STATEMENT OF THE CASE

The respondent adopts the petitioner's statement of the case with the following additions:

When the petitioner hired Attorney Zaccagnino to represent him in the narcotics and larceny-receiving case, the petitioner knew that Mr. Zaccagnino was already representing Sandra Baker and Andrea Sejerma, his accomplices in the conspiracy-false pretenses case. (App. pp. 44, par. 42, 116).

The sentencing remarks by Attorney Zaccagnino in the Sandra Baker and Andrea Sejerma cases, referring to Dukes, only had to do with the relationship between Dukes and the two girls in that particular case where all three were co-accused. The remarks were not connected with the narcotics and larceny-receiving case. (App. pp. 44, par. 40, 123). Mr. Zaccagnino's remarks about Dukes were a repetition of what had already been told the court by the State's Attorney. These facts were also before the court in great detail in the girls' presentence reports. (App. p. 57). The girls had cooperated with the police against petitioner long before Mr. Zaccagnino was hired to represent them and before he was hired by petitioner. (App. pp. 70, 128).

The petitioner knew the nature of the charges against him because he was present at a preliminary bind-over hearing when there was testimony taken. (App. pp. 13, 130). He knew the contents of the search warrant and return which had been the subject of a motion to suppress. (App. p. 12). The factual basis for the plea was before the court which accepted the plea in the search warrant itself. (App. p. 12, Resp.

App. pp. A5-12⁶⁻¹³). The sentencing court had the factual basis before it in the probation report. (App. pp. 33, 57).

The petitioner did not at any time make any complaint to the trial court that he was not satisfied with Attorney Zaccagnino because he represented Sandra Baker and Andrea Sejerma in the unrelated case. (App. pp. 44, par. 45, 136).

The petitioner's guilty plea was entered after plea-bargaining conferences. (App. pp. 39, par. 8, 120, 123, 131, 132). The petitioner received the sentence that he bargained for. (App. pp. 57, 131). He was experienced in criminal matters and in court appearances to answer to criminal charges. *State v. Dukes*, 157 Conn. 498, 505, 255 A.2d 614. The petitioner had several other felony charges pending against him at the time. (App. pp. 120, 131). He had been informed against as a second offender. G.S. 54-118 (Resp. App. p. A4).

When the petitioner requested that offenses against him in other counties be consolidated for disposition with his Hartford County case, he knew that he would be required to plead guilty to all the offenses that were consolidated. G.S. 54-17a (Resp. App. p. A3, App. p. 125).

SUMMARY OF ARGUMENT

In a collateral attack on a guilty plea, a claim of ineffective assistance of counsel based on an alleged conflict of interest is a factor to be considered in determining whether such plea was voluntary and intelligent. But for a guilty plea to be overturned on this ground it must be shown by petitioner that there was indeed a conflict and that counsel's conduct was so interrelated with the plea that it made the plea involuntary and unintelligent. There is nothing in the record to indicate or prove this relationship.

The petitioner's guilty plea was entered after plea bargaining for a favorable recommended sentence, and he received the sentence he bargained for.

The trial court made adequate on-the-record inquiry to determine that the plea was voluntary and knowing. There was a factual basis for the plea before the court which acted on a motion addressed to the search warrant and afterwards took the plea. The factual basis for the plea was set forth in the probation report which was before the sentencing court.

ARGUMENT

I

THE VALIDITY OF A GUILTY PLEA CANNOT BE COLLATERALLY ATTACKED BY AN UNPROVEN ASSERTION OF INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON ALLEGED CONFLICT OF INTEREST WITHOUT A SHOWING BY THE PETITIONER OF AN ACTUAL CONFLICT PREJUDICIAL TO HIM.

This is a collateral attack on a conviction resulting from a bargained plea of guilty to two of many offenses. The attack comes some two years after the conviction, after petitioner had appealed his conviction to the Connecticut Supreme Court, *State v. Dukes*, supra, and after he had petitioned for habeas corpus in the United States District Court. U. S. District Court, District of Conn., Civil Action No. 13029.

In neither his direct appeal nor his federal petition for habeas corpus did petitioner claim that his counsel represented conflicting interests so as to render his guilty plea involuntary. Bringing this habeas corpus on this ground was an afterthought.

The petitioner chose to take the benefits of a bargained plea of guilty and then to pursue his conflict claim in a collateral proceeding. See *McMann v. Richardson*, 397 U.S. 759 (1970).

As the Connecticut Supreme Court pointed out in its opinion below:

"... an allegation of the ineffective assistance of counsel is a factor to be taken into consideration in determining whether a guilty plea was voluntary and intelligent,

but for the plea and the judgment of conviction based thereon to be overturned on this ground, it must be demonstrated that there was such an interrelationship between the ineffective assistance of counsel and the plea, that it can be said the plea was not voluntary and intelligent because of the ineffective assistance. See *Parker v. North Carolina*, 397 U.S. 790, 796, 90 S. Ct. 1458, 25 L. Ed. 2d 735; *McMann v. Richardson*, 397 U.S. 759, 770, 90 S. Ct. 1441, 25 L. Ed. 2d 763; *United States ex rel. Boucher v. Reincke*, supra, 981." (App. p. 54).

Even if there was a conflict of interest, the judgment of conviction based on petitioner's guilty plea must stand unless the conflict rendered the plea involuntary and unintelligent. As it will be pointed out, *infra*, such a nexus between the alleged conflict of interest and the plea has not been established; to the contrary, there was no conflict and the plea was entirely voluntary and intelligent.

A. The petitioner was not denied the effective assistance of counsel by virtue of his counsel's representation of co-accused in another unrelated case. Petitioner has not established that there was a conflict of interest between his counsel's representation of him in the case at issue and his representation of co-accused in another unrelated case. In *Glasser v. United States*, 315 U.S. 60, (1942) the Supreme Court enunciated the principle that a conflict of interest in the representation of two or more defendants in the *same case* constitutes denial of effective assistance of counsel. The mere fact, however, of joint representation of co-defendants by a single attorney is not sufficient to establish ineffective assistance of counsel in the absence of a showing of actual conflict of interest prejudicial to one of the defendants. Undoubtedly it would have been a conflict of interest for the same lawyer to have represented the petitioner and the two girls in a case in which all three were charged as defend-



ants, at least if they had divergent interests and defenses. Here, however, we are not dealing with representation of co-defendants in the same case. Rather this is a case in which petitioner retained as his counsel a lawyer who he knew was already representing two persons jointly accused with petitioner in an unrelated case. Under these circumstances there was no apparent conflict either in the event of a trial or in the event of a guilty plea.

In a case in which petitioner selected and retained his own lawyer, the court in taking a plea must be able to rely on the fact that petitioner had made his own choice and that petitioner believed, for whatever reasons he may have had, that he was acting in his own best interests. When petitioner chose to plead guilty, the court properly inquired as to voluntariness of the plea and whether petitioner was satisfied with counsel. The court ought to be able to rely upon what petitioner said in response to its questions. There was not the slightest hint to the court that the fact of petitioner's counsel representing the two girls in some unrelated case had anything to do with his decision to plead guilty.

Petitioner himself did not make that claim in his testimony in his habeas corpus trial. He said that Attorney Zaccagnino tried to persuade him to plead guilty. (App. p. 152). He said that Attorney Delaney appeared with him at the time of his change of plea, that he was surprised, and that Mr. Delaney advised him to plead guilty temporarily in order to gain time. (App. pp. 148, 149). He said that he told the probation officer he was undecided about withdrawing his guilty plea. (App. p. 154). He said that he first told Attorney Zaccagnino that he wanted to withdraw his guilty plea on June 16, the day he was sentenced. (App. pp. 156, 157). He said all of those things, but he did not say that counsel represented interests divergent from his own.

The two girls did not appear for sentencing until June 2, over two weeks after Dukes changed his plea. When Attorney Zaccagnino appeared for the two girls at their sentencing, he did what any other lawyer representing them would have done. The court knew from the probation reports and from the remarks of the prosecution that they had been associated with Dukes. (App. p. 63). That was true. Counsel did blame Dukes in an attempt to secure favorable treatment for the girls. If that had any effect, it was to help the girls and not to prejudice petitioner. Petitioner was not before the court at that time and never did appear before the court in the case where he was charged with the girls.

There has been no showing that the petitioner's guilty plea resulted from the alleged conflict of interest. Petitioner does not claim, the record does not in any way disclose, and it cannot be inferred from the record, that either Attorney Zaccagnino or Attorney Delaney induced the petitioner to plead guilty in furtherance of a plan to obtain more favorable consideration from the court for the girls. The girls had already cooperated with the police before Attorney Zaccagnino ever represented them and they had pleaded guilty before petitioner appeared in Superior Court for plea. Neither is it claimed, nor does the record indicate, that the petitioner received any misleading advice from Attorney Zaccagnino or Attorney Delaney which led him to plead guilty.

See *McMann v. Richardson*, *supra*;

Parker v. North Carolina, 397 U.S. 790 (1970)

The guilty plea was the voluntary and intelligent act of the petitioner not motivated by any conflict of interest. The guilty plea was a waiver of constitutional rights — a waiver

of nonjurisdictional defenses — and was a valid plea of guilty.

Brady v. United States, 397 U.S. 742, 748 (1970);
United States ex rel. Rogers v. Warden, 381 F.2d
209, 212 (2d Cir. 1967)

Petitioner has pointed out that during court proceedings on May 9, when the case was assigned for trial, Attorney Zaccagnino moved to withdraw due to a "slight conflict." Upon examination, however, it is evident that this conflict was the result of Attorney Zaccagnino's efforts to negotiate a favorable disposition of the case, and that the petitioner's plea was not rendered involuntary or unintelligent because of the existence of this so-called "slight conflict." The fact of the matter is that there was a disagreement between the petitioner and Attorney Zaccagnino at the time in question because the petitioner was unwilling to follow Attorney Zaccagnino's recommendation that he plead guilty. The "slight conflict" referred to by Mr. Zaccagnino had nothing at all to do with his representation of the two girls in the other unrelated case. (App. pp. 112, 114, 116, 120). The petitioner contends that when Attorney Zaccagnino moved to withdraw, the court should have inquired into the situation and allowed the petitioner to proceed with other counsel of his own choosing. Discussions between the petitioner and Attorney Zaccagnino concerning the advisability of pleading guilty were in the nature of a privileged matter between attorney and client. This difference of opinion was later resolved and had nothing whatsoever to do with the conflict of interest now claimed to have affected the plea.

B. There must be some prejudice resulting from a conflict of interest before one can be said to have been denied effective assistance of counsel. It is unclear what

constitutes sufficient prejudice. While some courts require a strong showing of prejudice, see e.g., *Lott v. United States*, 218 F.2d 675 (5th Cir. 1955); *United States v. Burkeen*, 355 F.2d 241 (6th Cir. 1966), cert. den. sub. nom. *Matlock v. United States*, 384 U.S. 957 (1966); *Lugo v. United States*, 350 F.2d 858 (9th Cir. 1965), other courts have taken the position that a showing of only the possibility of prejudice is sufficient. *Lollar v. United States*, 376 F.2d 243 (D.C. Cir. 1967).

Where cases concerning defendants with conflicting interests or inconsistent defenses have been tried together, it has sometimes been said that the possibility that harm might result from the fact that the defendants are represented by the same lawyer is sufficient to show prejudice. The question arises in a context like that found in *Lollar v. United States*, supra. Where one lawyer represents co-defendants in a trial and the possibility exists that he may have to make decisions in the course of the trial inimical to the interests of one defendant in order to benefit the other, the possibility of prejudice is apparent. It does not logically follow that such should be the result where the defendants are charged in unrelated cases with different offenses, plead guilty and are sentenced at different times.

There has not been any showing of prejudice. The alleged conflict must be inferred from the fact that Attorney Zaccagnino made remarks about the petitioner to the sentencing trial judge before whom he was appearing on behalf of the two girls in the unrelated case in an effort to secure lighter sentences for them. The petitioner takes the position that he was prejudiced by these remarks because they were made before the judge who, two weeks later, sentenced him for the offenses to which he pleaded guilty in the case at

issue here. The petitioner was not prejudiced by these remarks because he had already made his plea bargain.

When petitioner appeared for sentencing on June 16, the cases in which the girls were charged and sentenced were not mentioned. (App. p. 28). There is nothing at all to suggest that the court connected the cases in any way or even remembered what had been said in the unrelated cases involving the girls. Whatever the effect was from what was said in the girls' case, it would not have been lessened if separate counsel appeared for the girls because separate counsel would have said the same things. The court was not influenced by what was said because the petitioner received the sentence he bargained for. He could not have received any lesser minimum sentence since he received only the mandatory statutory minimum. G.S. 19-265 (Resp. App. pp. A₁³, A₂)

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In *Brady v. United States*, supra, this court stated:

"We decline to hold, however, that a guilty plea is compelled and invalid under the Fifth Amendment whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged."

Brady v. United States, supra 751

The petitioner pleaded guilty in exchange for a promise by the prosecutor to recommend a certain sentence to the court lighter than that which he might have received — not because of the alleged conflict of interest.

II.

THE GUILTY PLEA BY THE COURT-EXPERIENCED PETITIONER WAS THE RESULT OF OVERWHELMING STATE EVIDENCE, EXPOSURE AS A SECOND OFFENDER, SEVERAL OTHER FELONY CHARGES PENDING AGAINST HIM, AND PLEA BARGAINING FOR A FAVORABLE RECOMMENDED SENTENCE WHICH HE RECEIVED.

The petitioner's arrest came about as a result of the seizure of narcotics in a dwelling occupied by him. The narcotics were seized in the course of the execution of a valid search warrant. Stolen goods on the premises were also seized in the execution of this warrant. (Resp. App. pp. A5-12).⁶⁻¹³ In connection with court proceedings on May 9, petitioner's counsel had filed a motion for a bill of particulars asking the State to disclose whether or not the State intended to offer proof of a sale of narcotics. The State furnished the petitioner the date, time and place of the narcotics sale by petitioner, which was made shortly before the warrant was executed and from the same premises. (App. pp. 15, 16, 22). In order to violate the narcotics statute under which the petitioner was charged, it was not necessary to prove the sale. The possession of the narcotics found in the execution of the search warrant would have been sufficient to constitute a violation of the statute. G.S. 19-246 (Resp. App. p. A3).

Petitioner and his counsel were aware of the evidence against him. Petitioner had heard the evidence against him at a bindover hearing. He knew the contents of the search warrant. He was aware that a motion to suppress the evidence seized pursuant to the search warrant had been denied.

In addition to the two cases in which guilty pleas were entered, petitioner had several other felony charges pending against him. Some of these charges were pending in Hartford

County and others were pending outside the County. Under the applicable statutes, petitioner could request that the outside cases be consolidated in Hartford County for disposition. This was requested by petitioner and the consolidation was agreed to by the State's Attorneys concerned. G.S. 54-17a (Resp. App. p. A₃)

The Connecticut statutes provided that one who had been convicted and sentenced before to a state prison or reformatory was subject to a maximum sentence twice that which might have been imposed on one who had not been so imprisoned. Petitioner had been charged as a second offender under the relevant statute and was subject to such an increased penalty. G.S. 54-118 (Resp. App. p. A₄)

It was in light of this state of affairs that the petitioner decided to plead guilty in exchange for a promise by the prosecutor to recommend a certain sentence to the court. It is not surprising under the circumstances recited above that the petitioner concluded that it would be in his own best interest to negotiate a plea for the best possible sentence recommendation, which the court adopted. (App. pp. 57, 131).

III.

PETITIONER'S GUILTY PLEA WAS VOLUNTARY AND INTELLIGENT, MADE AFTER ADEQUATE ON-THE-RECORD INQUIRY, RATIFIED BY HIS CONDUCT AND AFFIRMED ON DIRECT APPEAL.

Once the petitioner requested the court to change his plea to guilty and the court accepted the guilty plea, the petitioner performed certain acts that corroborated and ratified the voluntariness of his plea. He agreed to an amendment to the information being filed adding the larceny-receiving count to the charges against him and elected to plead guilty to that amendment. G.S. 53-63, 53-65 (Resp. App. p. A₂).

The case was continued to June 2 for sentencing and a probation report was ordered. The petitioner conferred with the probation officer who was preparing the probation report and did not tell the probation officer that his guilty plea was involuntary or that he wished to withdraw that plea. He requested the State to consolidate in Hartford County all the other charges pending against him in other counties. In order to consolidate charges from other counties into Hartford County, the statute required that the petitioner making such a request agree to plead guilty to all of the consolidated charges. G.S. 54-17a (Resp. App. p. A3).

The petitioner appeared in court on June 2 with his counsel, Mr. Zaccagnino, the day originally assigned for sentencing. On that date, the case was continued to June 16 for sentencing because the probation report had not been prepared and the cases to be consolidated from other counties had not at that time been received in Hartford County. In connection with this court appearance he did not make any representation to the court either that he was dissatisfied with his counsel or that he wished to withdraw his guilty plea. (App. p. 27).

From May 16 to June 16, the petitioner did not indicate in any way that his plea was involuntary. On June 16 when he asked for a continuance, for the first time he told the court that he wished to withdraw it, but he did not say anything about ineffective assistance of counsel due to a conflict of interest. As heretofore mentioned, he did not make this claim in connection with his appeal, and he did not make this claim in his petition for a federal writ of habeas corpus which he had filed before the present state habeas corpus.

The plea of guilty was entered not only in the light of all of the factual circumstances herein related but also only after sufficient inquiry by the court to determine that the plea was voluntary and intelligent. The petitioner claims that

the court's inquiry did not satisfy the requirements of *Boykin v. Alabama*, 395 U.S. 238 (1969). Although the plea was pre-*Boykin*, the *Boykin* requirements were essentially satisfied. In relation to the *Boykin* standard, the petitioner was questioned by the trial court about his satisfaction with his counsel, about his understanding that the State had the burden of proof, that he was entitled to a trial, and about the probable consequences of his plea. He was asked directly whether he was induced to plead guilty by anyone and whether his plea was of his own free will. His answers to all of these questions clearly showed that his plea was intelligent and voluntary. The court also had before it at this time the factual circumstances in connection with the case because the court had already examined and passed upon the validity of the search warrant in a motion to suppress. (App. pp. 12, 13). The court also knew that the State was prepared to prove, in addition to the circumstances set forth in the search warrant, a sale of narcotics by the petitioner.

Boykin requires that the court make sure that the accused has a full understanding of what the plea connotes and of its consequence. The court need not explain to the defendant the nature of the charge so long as there is a basis in fact for the court to accept the plea of guilty. With the factual situation before the trial court and with the court's knowledge of the maneuvering by the petitioner and the petitioner's counsel to avoid going to trial, and with the overwhelming evidence against petitioner, there can be no doubt that the trial court was satisfied that the plea was voluntary and knowing and that it was a rational decision.

Although *Boykin* has been adequately and substantially complied with in this pre-*Boykin* plea, it has been held that the *Boykin* rule should not be applied retroactively. *Consiglio v. Warden*, 160 Conn. 151, 276 A.2d 773; *Green v. Turner*, 443 F.2d 832 (10th Cir. 1971); *Commonwealth v. Godfrey*, 434 Pa. 532, 254 A.2d 923; *United States ex rel. Grays v.*

Rundle, 428 F.2d 1401 (3rd Cir. 1970). The same rationale as to retroactive application of the *Boykin* rule should apply as in the retroactive application of the *McCarthy* rule, only more so. *McCarthy v. United States*, 394 U.S. 459 (1969); *Halliday v. United States*, 394 U.S. 831, 833 (1969).

Finally, on direct appeal, the court found that petitioner's plea of guilty on May 16 was voluntary and intelligent; that he had ample time between May 16 and June 16 to indicate a desire to withdraw his guilty plea or to change counsel; that no credible evidence was introduced in support of his request to change his plea; and that his request to change his plea of June 16 at the time of sentencing was for the purpose of delaying sentencing.

State v. Dukes, *supra*, 506

A plea is voluntary when it is not induced by promises or threats which deprive it of the character of a voluntary act. It is intelligent when the defendant understands the meaning of the charge, what acts constitute guilt, and the consequences of his plea. Petitioner's plea was accepted only after judicial inquiry. The guilty plea is the most reliable and persuasive proof of guilt, and in this case it was clearly in petitioner's best interests.

CONCLUSION

The petitioner, experienced in criminal matters and in court appearances to answer criminal charges, launched this collateral attack on his conviction more than two years after his voluntary plea of guilty. He failed to assert this claim in a direct appeal and in a prior federal habeas corpus petition. He never raised the issue before the trial court. The court and the prosecutor could not have done anything to protect the record against such an attack. This amounts to ambushade of the trial court.

The late complaint of the petitioner about his counsel's conduct should not operate to turn loose the obviously guilty petitioner.

The integrity of the proceedings should not be thus impugned in the absence of an unmistakable showing of an actual conflict of interest prejudicial to the petitioner.

The judgment of the Supreme Court of Connecticut ought to be affirmed.

Respectfully submitted,

Respondent

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GEORGE D. STOUGHTON
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APPENDIX TO RESPONDENT'S BRIEF

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1965 SUPPLEMENT

Sec. 53-63. *Larceny. Shoplifting.* (a) Any person who steals any money, goods or chattels, or any bill issued by any state bank or national banking association, or any deed, lease, indenture, bond, writing obligatory, bill of exchange, promissory note, warrant or order for the payment of money or delivery of goods, receipt or discharge, or any book account or other writing being evidence of debt, adjustment or settlement, if the value of the property stolen exceeds two thousand dollars, shall be imprisoned not more than twenty years or fined not more than one thousand dollars or both; if it exceeds two hundred fifty dollars but does not exceed two thousand dollars, he shall be imprisoned not more than five years or fined not more than five hundred dollars or both; if it does not exceed two hundred fifty dollars but exceeds fifteen dollars, he shall be fined not more than two hundred dollars or imprisoned not more than six months or both; if it does not exceed fifteen dollars, he shall be fined not more than twenty-five dollars or imprisoned not more than thirty days or both. . . .

General Statutes of Connecticut
REVISION OF 1958

Sec. 53-65. *Receiving stolen goods.* Any person who receives and conceals any stolen goods or articles, knowing them to be stolen, shall be prosecuted and punished as a principal, although the person who committed the theft is not convicted thereof.

General Statutes of Connecticut
1965 SUPPLEMENT

UNIFORM STATE NARCOTIC DRUG ACT

Sec. 19-265. *Penalty for illegal possession or dispensing.* Any person who violates any provision of this chapter,

other than by administering to himself or by being addicted to the use of narcotic drugs, for the first offense, shall be fined not less than five hundred dollars nor more than three thousand dollars and imprisoned not less than five years nor more than ten years, or be both fined and imprisoned; and for a second offense, shall be fined not less than two thousand dollars nor more than five thousand dollars or imprisoned in the State Prison not less than ten nor more than fifteen years, or be both fined and imprisoned; and for any subsequent offense shall be imprisoned in the State Prison not less than fifteen nor more than twenty-five years.

General Statutes of Connecticut

1965 SUPPLEMENT

UNIFORM STATE NARCOTIC DRUG ACT

Sec. 19-246. *Acts prohibited.* No person shall manufacture, possess, have under his control, sell, prescribe, dispense, compound, administer to himself or to another person or be addicted to the use of any narcotic drug, except as authorized in this chapter.

General Statutes of Connecticut

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Sec. 54-17a. *Presentation in one county for offenses charged in various counties where defendant to plead guilty.* When any person is arrested in any county upon a criminal charge within the jurisdiction of the superior court and any indictment or information is pending against him in the superior court for one or more other counties, he may, with his consent and that of the state's attorney for each such county, be presented in the county where the first warrant served upon him originated for all of the offenses to which he intends to plead guilty.

General Statutes of Connecticut
REVISION OF 1958

Sec. 54-118. *Punishment upon second and third conviction.* Any person having been convicted of any crime and imprisoned therefor in the State Prison or state reformatory in this state or in any state prison or penitentiary for a term less than life, who afterwards is convicted of any crime for which the imprisonment may be a term in the State Prison, may be imprisoned therein for a term not exceeding double the term provided by law for such offense; and any person who has been twice convicted of the crime of theft, not punishable by imprisonment in such prison, and afterwards commits the same crime, may be imprisoned therein not more than three years.

SECOND OFFENDER INFORMATION

No. 28358, Superior Court

Hartford County, May Term, 1967

And the said Attorney further presents and informs that the said Charles O. Dukes was once before convicted, sentenced and imprisoned in the State Prison at Wethersfield, Connecticut, to wit:

On or about the 10th day of February, 1961, at the Superior Court holden in and for the County of Hartford, the said Charles O. Dukes was duly convicted of Breaking and Entering with Criminal Intent and Assault — and was sentenced to be confined in the State Prison at Wethersfield, Connecticut, for a term of not less than two nor more than five years, and was thereafter duly imprisoned under said sentence; in violation of Section 54-118 of the Connecticut General Statutes, Revision of 1958.

s/ John D. LaBelle
State's Attorney

STATE OF CONNECTICUT

CIRCUIT COURT

AFFIDAVIT AND APPLICATION
SEARCH AND SEIZURE WARRANT

TO: A Judge of the Circuit Court

The undersigned, being duly sworn, complains on oath that the undersigned has probable cause to believe that certain property, to wit: Narcotics, cookers, white powder, wires, scotch tape, syringes, eyedroppers, hypodermic needles, cotton, glassine bags, tinfoil, marihuana, brown paper, tissue paper, amphetamines, barbiturates and other addiction paraphernalia is possessed, controlled, designed or intended for use as a means of committing the crime of Section 19-246, Violation State Narcotic Drug Act and Section 19-227, Illegal Possession Drugs; is or has been or may be used as the means of committing the crime of Section 19-246, State Narcotic Drug Act and Section 19-227, Illegal Possession of Dangerous Drugs.

And is within or upon a certain person, place, or thing, to wit: 15 Barbour Street, Hartford, Connecticut, a one-family house occupied by Charles Dukes, Lucy Demirgian and Rubin Fletcher and on the person of said Charles Dukes, Lucy Demirgian and Rubin Fletcher and a 1965 Cadillac white convertible bearing license BZ 7154, a 1959 Plymouth black hard top bearing license AY 1641 and a blue Chevrolet Corvair bearing license 990-767, all Connecticut registration.

And that the facts establishing the grounds for issuing a Search and Seizure Warrant are the following:

1. The undersigned, Sgt. Ralph Frank and Det. Madison Bolden, experienced vice squad officers, and have been so assigned for the past five years.

2. The undersigned have maintained a surveillance for the past several weeks on 15 Barbour Street, Hartford, Connecticut. On many occasions, Charles Dukes, Lucy Demirgian and Rubin Fletcher would be seen by the undersigned operating the above-mentioned cars, Connecticut BZ 7154, AY 1641, and 990-767. Most of these instances the operators would be in the company of known drug users and these said vehicles would be coming to and from this address.

3. Checked with Motor Vehicle Department: Revealed Conn. BZ 7154, a 1965 white Cadillac convertible and AY 1641, a 1959 black Plymouth hard top are registered to Charles Dukes of 15 Cabot Street, Hartford, Connecticut. The 1965 Chevrolet, Conn. Registration 990-767 is registered to Hatfik Demirgian of 10 Imlay Street, East Hartford, Connecticut. These are the cars that have been operated by the above-mentioned subjects in which known drug users and addicts have been passengers.

4. Each of the undersigned have received information from the same confidential and reliable informant who has given information in the past leading to the arrest and conviction in other narcotic cases that on March 9, 10 and 11 of 1967, said informant has been in the house and observed Charles Dukes and Rubin Fletcher with a quantity of narcotics in their possession and Lucy Demirgian was present at the time. On March 13, 1967, said informant went to this location at about 3:30 p.m. and again witnessed Charles Dukes with a quantity of narcotics on his person.

Said informant is experienced and familiar with narcotics.

5. On March 13, 1967, between the hours of 3:00 and 4:00 p.m., the undersigned officers kept this location

under surveillance and personally observed known addicts enter and leave the house.

6. On March 12, 1967, after 1:00 a.m., the car of Charles Dukes, Conn. BZ 7154, was parked on Barbour Street along with several other cars. Many persons were seen to enter and leave these premises, 15 Barbour Street. Behind the front door was seen an unknown person admitting persons to the front porch.

7. During the past several weeks, numerous complaints have been received from neighbors in the area that known drug addicts are frequenting 15 Barbour Street and that Charles Dukes and others occupy this address. Also that said Charles Dukes has been seen driving to and from the house with known addicts in his white convertible Cadillac.

The undersigned has not presented this application in any other court or to any other judge.

Wherefore the undersigned prays that a warrant may issue commanding a proper officer to search said person or to enter into or upon said place or thing, search the same, and take into custody all such property.

SIGNED AT HARTFORD, CONNECTICUT, THIS 14th DAY OF MARCH, 1967.

s/ Madison Bolden, Detective

Affiant

s/ Sgt. Ralph J. Frank

Affiant

Jurat Subscribed and sworn to before me this 14th day of March, 1967.

s/ Daly, J.

Judge of the Circuit Court

SEARCH AND SEIZURE WARRANT

STATE OF CONNECTICUT

CIRCUIT COURT

The foregoing Affidavit and Application for Search and Seizure Warrant having been presented to and been considered by the undersigned, a Judge of the Circuit Court, the undersigned (a) is satisfied therefrom that grounds exist for said Application, and (b) finds that said Affidavit establishes grounds and probable cause for the undersigned to issue this Search and Seizure Warrant, such probable cause being the following: From said Affidavit, the undersigned finds that there is probable cause for the undersigned to believe that the property described in the foregoing Affidavit and Application is within or upon the person, if any, named or described in the foregoing Affidavit and Application, or the place or thing, if any, described in the foregoing Affidavit and Application, under the conditions and circumstances set forth in the foregoing Affidavit and Application, and that, therefore, a Search and Seizure Warrant should issue for said property, proof of affidavit having been made before me this day by Sgt. Ralph Frank and Det. Madison Bolden, two credible persons, that there is Probable Cause for believing that there are in the one family house on the premises of 15 Barbour Street, Hartford, Conn., on the persons of Charles Dukes, Lucy Demirgian, and Rueben Fletcher, in the 1965 White Cadillac Convertible bearing license BZ 7154, a 1959 Black Plymouth hardtop bearing license AY 1641, and a 1965 Chevrolet, Corvair, blue in color bearing license 990-767, all Connecticut registrations, narcotics and drugs are possessed, transported, sold and in some cases used in violation of Section 19-246, violation of the State Uniform Narcotic Drug Act and 19-227, Illegal Possession of Dangerous Drugs, of the Connecticut General Statutes.

NOW THEREFORE, by Authority of the State of Connecticut, I hereby command any Police Officer of a regularly organized police department or any State Policeman to whom these presents shall come within a reasonable time after the date of this warrant to enter into or upon and search the place or thing described in the foregoing Affidavit and Application, to wit: A single family house, 15 Barbour Street, Hartford, Conn. and in a 1965 White Cadillac Convertible bearing Conn. Reg. BZ 7154, a 1959 Black Plymouth Hardtop bearing Conn. AY 1641 and a 1965 Blue Chevrolet Conn. 990-767, search the person described in the foregoing Affidavit and Application, to wit: The persons of Charles Dukes, Lucy Demirgian, and Rueben Fletcher, for the property described in the foregoing Affidavit and Application, to wit: Narcotics, cookers, white powder, wires, scotch tape, syringes, eye droppers, hypodermic needles, cotton, glassine bags, tinfoil, marijuana, brown paper, tissue paper and amphetamines, barbiturates, and other addiction paraphernalia, and upon finding said property to seize the same, take and keep it in custody until the further order of the court, and with reasonable promptness make due return of this warrant accompanied by a written inventory of all property seized.

Signed at Hartford, Connecticut, this 14 day of March, 1967.

Signed (A Judge of the Circuit Court)

s/ Daly, J.

RETURN FOR AND INVENTORY
PROPERTY SEIZED ON SEARCH
AND SEIZURE WARRANT

Then and there by virtue of and pursuant to the authority of the foregoing warrant, I searched the person, place, or thing named therein to wit:

Person of Charles Dukes

Person of Lucy M. Demirgian

Single family dwelling known as 15 Barbour Street, Hartford, and found thereon or therein, seized, and now hold in custody, the following property:

1 cardboard box size $1\frac{1}{2}$ " X $1\frac{1}{2}$ " X 7" containing numerous glassine bags, inside of which were the following:

8 glassine bags containing white powder

1 small glass bottle containing white powder

1 small pill box labeled quinine sulphate containing 3 glassine bags

1 small white powder, 12 capsules, 10 of which contained white powder

2 rolls of scotch tape

1 "Cadillac" tank type vacuum cleaner — two tone green — all of above-mentioned items were found in the tank of this vacuum cleaner

52 glassine bags containing white powder found in brown paper bag under kitchen rug

1 small bottle label "Cocaine" containing white powder found under kitchen rug

3 glassine bags containing white powder — found on kitchen floor

1 glass eyedropper with black rubber bulb, small bottle cap, hyperdermic needle, small wad of cotton & copper wire, wrapped in kleenix in toilet

3 pink capsules — 3 blue capsules containing brown powder, wrapped in tinfoil — found in bedroom

1 jar of "McKesson" label milk sugar — containing white substance — found in cellar

1 yellow painted round can labeled "Borden's Beta Lactose" — containing white substance — found in cellar

\$281 in U.S. currency taken from left hand of Charles Dukes

1 grey metal case telephone address pad

which was possessed, controlled, designed or intended for use as a means of committing the crime described in the foregoing affidavit and application or is or has been used as the means of committing the crime described in the foregoing affidavit and application, or was stolen or embezzled.

Date of this return 3/15/67

Signed,

Det. Madison Bolden

Det. Richard J. Hurley

Tpr. William Woodward

RETURN FOR AND INVENTORY
PROPERTY SEIZED ON SEARCH
AND SEIZURE WARRANT

Then and there by virtue of and pursuant to the authority of the foregoing warrant, I search the person, place or thing named therein to wit: Single family house at 15 Barbour Street, Hartford and found thereon or therein, seized and now hold in custody, the following property:

1 - Underwood Typewriter — col grey — large type
ser nbr #13-9199810

1 - Royal office 440 typewriter col grey — ser #118526245
— New and in original carton

1 - 17" G.E. portable television set — color black, with
identification of "Hartford Hotel" in red paint on bottom side.
ser #385513

1 - Evette Schaeffer saxophone — gold color — ser nbr
#9320

3 pc. Samsonite Luggage — with name and address of
owner "Laurendeau — 40 Orchid St., Bristol" on same

3 cardboard cartons with black crayon marking of
"R y's X (Ray's Pharmacy) on same, cartons containing fol-
lowing liquor: 4 qts of Smirnoff Vodka, 2 qts of Milshire
gin, 1 fifth Johnny Walker Red Label, 11 half pints of J & B
scotch, 12 half pints of Cuddysark, 4 fifth of Cuddysark, 1 Qt
of Gordon's Gin, 1 fifth of DeKuyper creme decoca, 1 fifth
of Smirnoff gin, 2 fifths of Teacher's Highland, 1 fifth Sea-
grams VO

1 - dice table

which was possessed, controlled, designed, or intended for use
as a means of committing the crime described in the fore-
going affidavit and application, or is or has been used as the
means of committing the crime described in the foregoing
affidavit and application, or *was stolen* or embezzled.

Date of	signed	
this return	Thomas Barber	Edward J. Sheren
March 15th/1967	Sgt. Thomas Barber	Det. Edward Sheren